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JAMES SCHMIDT
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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

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CIVIL ACTION NO. C-1-00-869

MARK R. HOOP and
LISA J. HOOP

PLAINTIFFS/
COUNTERCLAIM DEFENDANTS

V. **MOTION FOR ORDER AWARDING INTEREST, COSTS, EXPENSES,
ATTORNEY'S FEES, AND EXEMPLARY DAMAGES**

JEFFREY W. HOOP, STEPHEN E. HOOP, and
HOOPSTERS ACCESSORIES, INC.

DEFENDANTS/
COUNTERCLAIM PLAINTIFFS

Defendants/Counterclaim Plaintiffs, Jeffrey W. Hoop, Stephen E. Hoop, and Hoopsters Accessories, Inc. (collectively "Defendants"), by counsel, moves the Court for an Order awarding Defendants a Judgment against Plaintiff/Counterclaim Defendant, Mark R. Hoop, for interest, costs, expenses, attorney's fees, and exemplary damages. As grounds for this Motion, Defendants state:

1. 35 U.S.C. § 284 states as follows:

Upon finding for the claimant the court shall award the claimant damages adequate to compensate for the infringement, but in no event less than a reasonable royalty for the use made of the invention by the infringer, **together with interest and costs as fixed by the court.**

When the damages are not found by a jury, the court shall assess them. **In either event the court may increase the damages up to three times the amount found or assessed.**

2. Damages shall be increased where acts of infringement were deliberate and wilful. W. S. Godwin Co. v. International Steel Tie Co. (1928, CA6 Ohio) 29 F2d 476; Wensel v. Gold Hill Hardware Mfg. Co. (1927, DC Cal) 21 F2d 974; Deere & Co. v. International Harvester Co. (1978, SD Ill) 460 F.Supp. 523, revd without op (CA7 Ill) 618 F2d 110, on remand (CD Ill) 496 F.Supp. 397; Eltra Corp. v. Basic, Inc. (1977, DC Ohio) 193 USPQ 426; Wilden

Pump & Engineering Co. v. Pressed & Welded Products Co. (1978, DC Cal) 199 USPQ 390;
Milgo Electronic Corp. v. United Telecommunications, Inc. (1978, DC Kan) 200 USPQ 481.

3. **Because of wilful and deliberate infringement, case is exceptional justifying award of treble damages, costs, expenses, and attorney's fees for wantonly disregarding plaintiffs' patent.** Milgo Electronic Corp. v. United Telecommunications, Inc. (1978, DC Kan) 200 USPQ 481.

WHEREFORE, Defendants, by counsel, respectfully request the Court for an Order awarding Defendants a Judgment against Plaintiff/Counterclaim Defendant, Mark R. Hoop, for interest, costs, expenses, attorney's fees, and exemplary damages.

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Counsel for Defendants/
Counterclaim Plaintiffs
Kentucky Bar No. 81805

NOTICE

The foregoing Motion for Order Awarding Interest, Costs, Expenses, Attorney's Fees, and Exemplary Damages will be heard at the convenience of this Honorable Court.

STELLA B. HOUSE
ATTORNEY AT LAW, P.S.C.

By: Stella B. House, J.D.
Stella B. House, J.D.
Counsel for Defendants/
Counterclaim Plaintiffs

CERTIFICATE OF SERVICE

I certify that an accurate copy of the Motion for Order Awarding Interest, Costs, Expenses, Attorney's Fees, and Exemplary Damages was sent to Alfred J. Mangels, Esq., Co-Counsel for Plaintiffs/Counterclaim Defendants, 4729 Cornell Road, Cincinnati, Ohio 45241, and Timothy A. Magee, Esq., Co-Counsel for Plaintiffs/Counterclaim Defendants, 130 Sherman Drive, Findlay, Ohio 45840, by United States mail, postage prepaid, on February 19, 2004.

STELLA B. HOUSE
ATTORNEY AT LAW, P.S.C.

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